

Remarks and Arguments

Claims 20-58 are pending in this case. Claims 57-58 are new. Applicants have amended a number of the previously presented claims to clarify the language.

The Examiner rejected claims 20-56 for obviousness-type double patenting over claims of U.S. Patent Nos. 6,095,985 and 5,778,882. As noted in Applicants' prior response (mailed May 5, 2006), Applicants will file a terminal disclaimer if still necessary when the application is otherwise found to be in condition for allowance.

The Examiner also rejected claims 20-56 under 25 U.S.C. 112 for failing to comply with the written description requirement. The Examiner contends that a data logger configured to initiate communication via the modem is not described. Applicants address this rejection below, as well as support for new claims 57 and 58.

The Examiner rejected claims 20-56 on the basis of prior art. The Examiner did not give weight to the limitation directed to a data logger configured to initiate communication via the modem because of the section 112 rejection. Consequently, the Examiner has not yet responded to the arguments presented in Applicants' prior response, which arguments continue to apply.

Applicants appreciate the telephone interview with the Examiner on October 18, 2006. During the interview, the Examiner explained in more detail the section 112 rejection of claims 20-56, the descriptions of communication between the data logger and the database in the specification were discussed in general, and it was agreed that Applicants would submit arguments and/or amendments to address the section 112 rejection.

Claims 20-56

Claim 20 includes language that "the data logger is configured to directly connect to the modem and to initiate communication via the modem." Claim 49 includes similar language. As discussed in the prior response, this requirement is not taught in the prior art of record.

The Examiner contends that the data logger configured to initiate communication via the modem is not described in the application. However, Applicants direct the Examiner to, for example, paragraph 45 of the specification: “Preferably, the data link from each of the health trackers 108 and each of the data loggers 106 to the database is established using an associated modem 110.” To “establish” is to bring into existence or bring about. Thus, the specification specifically describes that a data link (communication) from the data logger to the database is established (brought into existence – that is, initiated). Consequently, as claims 21-48 depend from claim 20 and claims 50-56 depend from claim 49, each of these claims is supported by the specification.

Claim 57

Claim 57 is similar to claim 20. The last paragraph refers to a “data communication subsystem for sending data from the data logger to a central database.” As explained in paragraph 9 of the specification, a communication device such as a modem is used to connect the health monitor to a network for communicating data to the database. Paragraph 5 refers to a communications system, and paragraph 153 refers to a modem or other data transfer device. Thus, a modem (as in claim 20) is described as an example of a component for data communication – that is, of a data communication subsystem. Consequently, a “data communication subsystem” is supported by the specification.

Claim 57 also provides that the data logger is configured “to establish communication with the central database.” As noted above, paragraph 45 of the specification describes the data logger establishing a data link (communication) with the database. Thus, the specification also supports this language.

Claim 58

Claim 58 is similar to claim 57. The last paragraph refers to a “data communication subsystem for uploading data from the data logger to a central database.” The specification repeatedly describes uploading data from the health tracker, and in particular from the data logger,

to the database. See, e.g., paragraphs 8, 9, 44, 153, and 157. Thus, the specification also supports this language.

The Prior Art

The primary prior art on which the Examiner based the rejections is the Dahlstrom article. Dahlstrom describes the MiniDoc, a “portable patient computer” that permits patients to enter certain self-ratings. In a section entitled “New Possibilities,” Dahlstrom states that “the MiniDoc can be connected to a central computer via a modem using the patient’s own telephone line. The central computer can then automatically call the various MiniDocs in a study and retrieve the data collected during the day.” Thus, Dahlstrom describes a system in which the central computer initiates communication with the MiniDocs and the central computer downloads data from the MiniDocs to the database. The central computer controls the transfer.

In contrast to Dahlstrom, where the central computer automatically calls the MiniDocs, claims 20-56 provide that the data logger initiates communication with the database, and claim 57 provides that the data logger establishes communication with the central database. Unlike having the central computer retrieve the data from (that is, download from) the MiniDocs, claim 58 provides that the portable device uploads the data to the database, so that the portable device controls the transfer. Consequently, claims 20-58 are believed patentable over the prior art of record.

In view of the above amendments and arguments, Applicants believe the pending application is in condition for allowance.

Please deduct the fee for the present RCE, set forth in 37 C.F.R. § 1.17(e), and that for a one-month extension of time, from our Deposit Account No. 08-0219.

Application No. 10/693,232
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Please charge any other fees that may be due, or credit any overpayment of the same, to Deposit Account No. 08-0129. The Examiner is encouraged to telephone the undersigned to help resolve any outstanding issues.

Respectfully submitted,

Dated: November 9, 2006

A handwritten signature in black ink, appearing to read 'D. Steinberg', written over a horizontal line.

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